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17th January 2022

WWU response to Ofgem statutory consultation on a proposal to modify the Special Conditions and the Standard Special Conditions of the Gas Transporter licence

Dear Dale,

Thank you for the opportunity to respond to this consultation. We have provided a summary of our key concerns below followed by detailed drafting points in the following section.

Key concerns

Updates of values

A number of values in the licence are still to be amended following the CMA direction these are listed below.

Special Condition 8.1 – Governance of Price Control Financial Instruments

We note the change to test of significance and that this is now tied to the Materiality Threshold. What is not entirely clear is whether the test is provided to each modification separately or if it is applied to the total of modifications across a period for example a financial year. This is important because there could be a succession of small changes that collectively sum to the materiality threshold. We have proposed revised drafting below to address this by requiring the cumulative effects of previous modifications to be taken into account when deciding whether the Materiality Threshold has been reached.

Another point to note is that the value of the threshold varies by network so it is possible that a change could trigger the requirement for a statutory consultation for one network but not another if the changes did not have an impact that was directly proportionate to Base Allowed Revenue.

Governance of NARMS documents

WWU is of the view that all Associated Documents that effectively impose licence obligations on Transporters should be subject to modification by the statutory process in s.23 Gas Act. We therefore welcome that the NARMS Handbook and NARMS workbook will be only subject to modification using the statutory process, apart from some minor changes that can be made by direction.

Net Zero Pre-construction Work and Small Net Zero Projects Re-opener Governance Document

This document states “Where a potential NZASP project is substantially innovation related (for example, it could also be eligible for funding under either the Strategic Innovation Fund or Network Innovation Allowance) a contribution should be considered.” and that the default contribution should be 10%.

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We challenge this because innovation between GD1 and GD2 has changed in focus. In GD1 innovation was largely, but not entirely, focussed on funding projects that were uncertain but that if successful could deliver business benefits. This succeeded in stimulating more innovation, in GD2 that has established in businesses. Licensees having received the stimulation from funding have now developed self-sustaining innovation teams and that shows the benefit of the regulatory regime funding activity in one price control period and then the customers receiving the full benefit in subsequent price control periods. Projects to deliver Net Zero will help deliver the UK's binding climate change obligations but will not in themselves deliver business benefits to licensees. The projects may therefore be innovative; however, this is not innovative in the same way as many GD1 projects may have been innovative. We therefore think that the presumption that licensees or their partners will provide a contribution is wrong. We agree that projects need to be well managed to ensure that they deliver the outputs but do not think that contributions for projects that are initiated to deliver Net Zero outputs rather than business benefits is the correct approach.

As the drafting stands, size of any contribution is left open and the decision by Ofgem on what is appropriate for individual projects will be taken by individuals and will be subject to a degree of subjectiveness. Given the reorganisation Ofgem and the turnover of individuals in roles (for example Mohamed Khalif who was the Senior Policy Manager for this re-opener is no longer in that role and so the Ofgem corporate memory of policy discussions on this subject to date has been lost. We suggest that the document should contain the presumption that only projects that are both innovative and that are expected to deliver business benefits (rather than Net Zero benefits) should require a contribution.

Proposed amendments

Special Condition 1 – Definitions

4x4

The definition needs further amendment as the change from “payload” to “gross Vehicle weight” that WWU proposed has not been implemented. This will bring the definition into line with the definitions used for vans. It should therefore read:

“means a four wheel drive vehicle with a ~~payload~~ **gross vehicle weight** of no more than 3,500kg.”

Materiality Threshold

This requires amending to £3.87M for WWU

Ex-Ante Base Revenue

This requires amending to £387M for WWU

Special Condition 8.1

Amend 8.1.3 (b) to read:

(b) the modification will have either no impact on or an impact, **when considered with all previous non-significant modifications**, on the licensee's allowed revenue below the Materiality Threshold

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Net Zero Pre-construction Work and Small Net Zero Projects Re-opener Governance Document

Amend paragraph 2.9 to read:

Where a potential NZASP project is substantially innovation related (for example, it could also be eligible for funding under either the Strategic Innovation Fund or Network Innovation Allowance) **and also delivers significant business benefits (rather than primarily delivering Net Zero benefits)** a contribution should be considered.

Yours sincerely,



Carly Evans
Head of Regulation
Wales & West Utilities

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